



Brussels, 3 June 2014

BACKGROUND¹

JUSTICE and HOME AFFAIRS COUNCIL

Thursday 5 and Friday 6 June in Luxembourg

The meeting will be chaired by **Nikolaos DENDIAS**, Greek Minister of Public Order and Citizen Protection, **Charalambos ATHANASSIOU**, Greek Minister of Justice, Transparency and Human Rights and Deputy Minister of Interior **Leonidas GRIGORAKOS**.

On Thursday, starting at 9.30, Home affairs ministers are expected to reach a general approach on the proposal for a regulation on the **European Agency for Law Enforcement Cooperation and Training (Europol)**.

Ministers will be briefed by the EU Counter Terrorism Coordinator on the state of play and proposals for future work concerning **foreign fighters and returnees** from a counter-terrorism perspective and will be invited to exchange views on this file. They are also due to adopt the draft **revised EU strategy for combating radicalisation and recruitment to terrorism**.

After lunch, Justice and Home affairs ministers will hold its last debate on the **Future development of the Justice and Home Affairs area**. The outcome of the debate will serve as an input for the strategic guidelines to be defined by the European Council on the 26-27 of June.

Moreover, the Council is expected to discuss and adopt conclusions on the **EU anti corruption report** presented by the European Commission in February this year.

The Council in the Mixed Committee format (the EU plus Norway, Iceland, Liechtenstein and Switzerland) will be updated by the Commission on the state of implementation of the operational actions within the context of the **Task Force Mediterranean**. It will also discuss the fifth biannual report from the Commission on the functioning of the Schengen area and will be informed on the state of play of the **Data Protection Directive**. The Council will take note of the outcome of those debates.

On Friday, starting at 10.00, Justice ministers are expected to reach a general approach on two proposals: a directive on **procedural safeguards for children** suspected or accused in criminal proceedings and a regulation amending the Council regulation on **insolvency proceedings**.

In the field of **data protection**, the Council is expected to reach a partial general approach and will held an orientation debate on the concept on the one-stop-shop mechanism. Ministers will be briefed by the Presidency on the state of play of the directive for the police and criminal justice authorities.

The Council will be invited to have a policy debate on two proposals: a regulation on the establishment of the **European public prosecutor's office (EPPO)** and a regulation on the European Union Agency for Criminal Justice Cooperation (**Eurojust**).

¹ This note has been drawn up under the responsibility of the press office

P R E S S

Press conferences:

- Home Affairs Council (*Thursday, at the end of the meeting +/- 18.00*);
- Justice Council (*Friday, before lunch +/- 13.00*)

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Press conferences and public events by video streaming: <http://video.consilium.europa.eu/>

Video coverage in broadcast quality (MPEG4): <http://tvnewsroom.consilium.europa.eu>

Photographic library on www.consilium.europa.eu/photo *for photos in high resolution.*

HOME AFFAIRS

Europol

– *General approach*

The Council is expected to reach a general approach on the proposal for a regulation on the European Agency for Law Enforcement Cooperation and Training (Europol) ([10033/14](#)). This general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the regulation.

One of the aims of the Commission's proposal ([8229/13](#)) was for Europol to take over and build on the tasks currently carried out by CEPOL, creating a single European law enforcement agency and repealing the existing decisions on Europol and CEPOL².

At its meeting on 6-7 June 2013, the Council held its first orientation debate on the proposed regulation and a very large majority of delegations opposed the merger essentially because it would not be beneficial for either agency and they were not convinced that savings could be made through a merger. On 3 March 2014 the Council decided that all the provisions linked to this idea will be removed from the draft Europol regulation and the Commission was invited to submit a new proposal on the "lisbonisation" of CEPOL.

Apart from the merger, the new draft regulation is mainly aimed at "lisbonising" the current Council Decision on Europol³, notably including provisions on parliamentary oversight, adapting Europol's external relations to the new Treaty rules and appointing the European Data Protection Supervisor as the data protection supervisory body for Europol. Moreover, the draft regulation aims at providing Europol with a flexible and modern data management regime and aligning Europol's governance with the general guidelines applicable to agencies.

Task Force Mediterranean

– *Follow up / Information from the Commission*

The Council will be briefed by the Commission about the state of the implementation of the operational actions within the context of the Task Force Mediterranean.

The Task Force Mediterranean was set up following the JHA Council of 7-8 October 2013 in order to identify the tools which the EU has at its disposal and which could be used in a more effective way to avoid the tragic events that had occurred off the coast of Lampedusa.

At its meeting on 24-25 October 2013, the European Council agreed to take the appropriate measures in order to prevent and avoid such tragedies happening again, based on the imperative of prevention and protection and guided by the principle of solidarity and fair sharing of responsibility.

The European Council invited the Task Force Mediterranean, led by the Commission and involving member states, the EEAS and a number of EU Agencies, to identify priority actions for a more efficient short-term use of European policies and tools.

On 4 December 2013 the Council had a discussion on the communication of the Commission on the work of the Task Force Mediterranean ([17398/13](#)) and welcomed the set of actions contained in the document.

² Decision 2005/681/JHA. ([OJ L 256, 1/10/2005, p. 63](#))

³ Decision 2009/371/JHA. ([OJ L 121, 15/05/2009, p. 37](#))

The task force identified five main areas of action which will be pursued actively during the coming months:

- Actions in cooperation with third countries.
- Regional protection, resettlement and reinforced legal avenues to Europe.
- Fight against trafficking, smuggling and organised crime.
- Reinforced border surveillance contributing to enhancing the maritime situational picture and to the protection and saving of lives of migrants in the Mediterranean.
- Assistance and solidarity with member states dealing with high migration pressure.

The Presidency reported to the European Council on 20 December on this matter. In its [conclusions](#), the European Council welcomed the Commission communication and called for the mobilisation of all efforts in order to implement actions proposed in the communication with a clear timeframe to be indicated by the Commission.

It was considered that increased engagement with third countries in order to avoid that migrants embark on hazardous journeys towards the EU should be a priority. Information campaigns, regional protection programmes, mobility partnerships and an effective return policy were also considered important components of this comprehensive approach.

The European Council reiterated the importance it attaches to resettlement for persons in need of protection and to contributing to global efforts in this field. It also called for the reinforcement of FRONTEX border surveillance operations and actions to fight smuggling and human trafficking, as well as to ensure that appropriate solidarity is shown to all Member States under high migration pressure.

The European Council invited also the Council to regularly monitor the implementation of the actions and indicated that it will return to the issue of asylum and migration in June 2014 in a broader and longer term policy perspective, when strategic guidelines for further legislative and operational planning in the area of freedom, security and justice will be defined ("post-Stockholm"). Ahead of that meeting the Commission is invited to report to the Council on the implementation of the actions set out in its communication.

On 3 March 2014, the Council took note of the oral report presented by the Commission, supported by the EEAS, EASO, FRONTEX and EUROPOL, on the implementation of the operational actions identified in its communication on the Task Force. The Council underlined the importance of a full and timely implementation of the 37 operational actions and invited the Commission to present a clear timeframe for the contributions of different stakeholders in order to ensure that implementation. All relevant stakeholders were invited to actively participate in a coordinated way in the implementation of the operational actions respecting the timeframe set out by the European Council. Following this invitation, the Commission has collected all contributions made by member states, EU agencies and EEAS and will present a List of Actions – Task Force Mediterranean to the Council on 5 June.

Ministers will be invited to comment on the information provided by the Commission and, if appropriate, provide information on how member states have participated and intend to further participate in the implementation of the above operational actions.

Schengen Governance - Fifth biannual report on the functioning of the Schengen area

– Presentation and exchange of views

The Council will discuss the Commission's fifth biannual report on the functioning of the Schengen area (1 November - 30 April 2013) ([10063/14](#))

The European Council in June 2011 stated that political guidance and cooperation in the Schengen area need to be further strengthened, enhancing mutual trust between member states. On 8 March 2012, the Council adopted conclusions ([7417/12](#)) regarding guidelines for the strengthening of political governance in the Schengen cooperation. In the conclusions the Council agreed to have discussions at ministerial level on that matter once during each presidency, and welcomed the intention of the Commission to present regular reports on the issue in that regard.

Terrorism - Foreign fighters and returnees

– Presentation from the CTC and discussion

The Council will have an in-depth discussion on the issue of foreign fighters and returnees from a counter-terrorism perspective, in particular with regard to Syria, on the basis of a document prepared by the EU Counter Terrorism Coordinator (CTC).

In June 2013 the Council already expressed broad support for a package of measures suggested by the CTC and tasked its working parties with preparing implementing measures where necessary.

In December 2013, the Council identified four priority areas where EU action in support of member states' efforts would be particularly useful: prevention, information exchange/identification and detection of travel, criminal justice response and cooperation with third countries.

The current document, drafted in close cooperation with the Commission and the EEAS, describes the state of play of the work done on this file as well as some new proposals, particularly in the area of prevention.

Foreign fighters remain a major threat to the European Union and its member states, as well as to the Middle East and North African countries. Syria continues to attract growing numbers of foreign fighters, including from Europe, and this phenomenon is likely to persist in the coming years. Reducing the flow of individuals who may participate in fighting in Syria and intervening on those on their return remains a challenge and a key priority.

Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism

– Adoption

The Council is expected to adopt the revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism ([9956/14](#)).

This revision was requested by Home Affairs ministers in June 2013 ([9447/13](#)) and was elaborated following a Commission Communication on Countering Violent Extremism of January this year ([5451/14](#)).

The main objective of the strategy should be to prevent people from becoming radicalised, being radicalised and being recruited to terrorism and to prevent a new generation of terrorists from emerging.

To do so, the revised strategy stresses the need to:

- Promote security, justice, and equal opportunities for all
- Ensure that voices of mainstream opinion prevail over those of extremism
- Enhance government communications
- Support messages countering terrorism
- Counter online radicalisation and recruitment to terrorism
- Train, build capacity and engage first line practitioners across relevant sectors
- Support individuals and civil society to build resilience
- Support disengagement initiatives
- Support further research into the trends and challenges of radicalisation and recruitment to terrorism
- Align internal and external counter-radicalisation work

JUSTICE AND HOME AFFAIRS

Future development of the JHA Area

Justice and Home Affairs ministers are expected to have a concluding debate on the Future development of the Justice and Home Affairs area, on the basis of a discussion paper prepared by the Presidency summarising all the work done so far. The outcome of the debate will serve as an input for the strategic guidelines to be defined by the European Council on the 26-27 of June.

In December 2009, the European Council adopted the [Stockholm Programme](#), a multi-annual instrument for the development of an area of freedom, security and justice for the years 2010-2014.

Since the Lisbon Treaty introduced major changes in the freedom, security and justice area, future developments on this field should be discussed in the light of Article 68 TFUE which provides that the European Council "shall define the strategic guidelines for legislative and operational planning" in this regard.

The European Council in its 27-28 June 2013 conclusions mandated the future Presidencies to start discussions on the future strategic guidelines in the area of freedom, security and justice with a view to its June 2014 meeting. The Lithuanian Presidency, being the first to take office after the conclusions were adopted, started this discussion by holding a ministerial debate on 18-19 July 2013 at the informal ministerial meeting in Vilnius. The Greek Presidency continued this debate at the informal ministerial meeting in Athens on 23-24 January and at the Justice and Home Affairs Council in March 2013

EU Anti-corruption report

– Conclusions

The Council is expected to discuss and adopt conclusions on the EU anti corruption report, adopted by the European Commission in February this year.

The conclusions ([9969/14](#)) stress that the report is a valuable tool to consolidate anti-corruption efforts and promote high anti-corruption standards across the EU and that it should be seen as a next step in advancing the establishment of an EU-wide area based on integrity values.

They also call on the Commission to engage actively in close cooperation with the member states in a review of its methodology with a view to enhancing its political weight and value. Particular attention should be given to the prior involvement of the member states in the fact-finding stages of the procedure in order to collect objective and reliable data.

The conclusions invite member states to make further efforts to encourage anti-corruption prevention measures and enforce effectively anti-corruption laws and policies at national level, while noting that the situation varies from one member state to another.

Finally, they also urge the Commission to include in future reports a review of the integrity policies put in place in the EU institutions and for the full accession of the EU to the [GRECO](#)⁴

The Commission adopted the EU Anti corruption report In February 2014 ([6113/14](#)). The document provides a clear picture of the situation in each member state: measures in place, outstanding issues, policies that are working and areas that could be improved.

JUSTICE

Data protection regulation

– Public debate

The Council is expected to reach a partial general approach on specific issues of the draft regulation setting out a general EU framework for data protection ([10349/14](#)), on the understanding that nothing is agreed until everything is agreed. It will also hold an orientation debate on the "one stop shop" mechanism on the basis of a document prepared by the Presidency ([10139/14](#))

The partial general approach includes the text of Article 3(2) (territorial scope), the text concerning the respective definitions of Binding Corporate Rules and "international organisation" (Articles 4(17) and (21)) and the transfer of personal data to third countries or international organisations (Chapter V) of the draft regulation.

At the March JHA Council Ministers broadly supported the draft provisions as regards the territorial scope of the regulation, highlighting the need to broadly ensure the application of Union rules to controllers not established in the EU when processing personal data of Union data subjects.

Ministers also confirmed their understanding that international transfers of personal data to third countries should take place on the basis of the structure and the key principles contained in Chapter V. They also underscored the exceptional nature of the transmission of personal data to third countries or international organisations based on derogations and the need to provide safeguards to ensure the fundamental rights and freedoms as regards the protection of personal data as enshrined in Article 8 of the Charter of Fundamental Rights of the European Union.

⁴ The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor States' compliance with the organisation's anti-corruption standards

The compromise text submitted by the Presidency states explicitly that transfers to third countries can take place if the data controller or the processor applies appropriate safeguards, including by way of approved codes of conduct or an approved certification mechanism which is currently not foreseen. Furthermore, a classification is operated between appropriate safeguards, which do not require any specific authorisation from supervisory authorities and appropriate safeguards that remain subject to authorisation from the competent supervisory authority.

Transfers can also be based on derogations in specific situations. Further clarifications have been made about the criteria to be taken into account and on the important reasons of public interests (e.g. between tax or customs administrations, between financial supervisory authorities, between services competent for social security matters or for public health or for reduction and elimination of doping in sport).

As requested by some member states the Presidency has introduced in the draft Regulation an explicit provision authorising the limitation of transfers to third countries in cases of important reasons of public interests. The new provision (Article 44, 5a) will allow such limitations in the absence of a Commission adequacy finding, with a notification of the national measures to the Commission.

In January 2012, in the light of rapid technological developments and globalisation, the European Commission presented a legislative package to update and modernise the principles enshrined in the 1995 Data Protection Directive (Directive 95/46/EC)⁵, to guarantee data protection rights in the future. The package includes a policy communication setting out the Commission's objectives ([5852/12](#)), and two legislative proposals as a legislative package: a regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) ([5853/12](#)) and a directive on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties and the free movement of such data for the police and criminal justices authorities ([5833/12](#)).

The data protection legislative reform aims at building a stronger and more coherent data protection framework in the EU, backed by strong enforcement that will allow the digital economy to develop across the internal market, put individuals in control of their own data and reinforce legal and practical certainty for economic operators and public authorities. Data protection in the European Union is a fundamental right. The EU data protection reform seeks to ensure a very high level of protection of personal data.

Data protection directive

– State of play

The Council will be informed by the Presidency on the state of play ([9873/14](#)) of the proposal for a directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data.

⁵ Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23.11.1995](#))

This proposal is part of the comprehensive data protection legislative package which was adopted by the Commission on 25 January 2012. The package comprises two legislative proposals, one for a General Data Protection Regulation ([5853/12](#)), which is intended to replace the 1995 Data Protection Directive⁶ (former first pillar), and one for a directive ([5833/12](#)) on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, which is intended to replace the 2008 Data Protection Framework Decision⁷ (DFPD) (former third pillar).

The proposed directive aims to ensure a consistent and high level of data protection in this field, enhancing mutual trust between police and judicial authorities of different member states and facilitating the free flow of data and co-operation between police and judicial authorities. The European Parliament is for the first time co-legislator with respect to the areas covered by this Directive.

The DFPD has a limited scope of application. It applies to cross-border data processing and not to processing activities by the police and judiciary authorities at purely national level. This is liable to create difficulties for police and other competent authorities in the areas of judicial co-operation in criminal matters and police co-operation. They are not always able to easily distinguish between personal data that will remain purely domestic and personal data that might be used in cross-border exchanges. The proposed directive should meet the specific nature of these fields and lay down the rules relating to the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

The previous Presidencies (the Danish, the Cyprus, the Irish and the Lithuanian) have dealt with the two proposals as a comprehensive legislative framework, while frontloading the work on the regulation in order to also benefit the discussions on the directive.

European Public Prosecutor's Office

– *State of play/Orientation debate*

The Council will be briefed by the Presidency on the state of play on the proposal regarding the setting up of a European Public Prosecutor's Office (EPPO). Ministers are expected to welcome the text set out in the document prepared by the Presidency ([9834/1/14 REV 1](#)) as a basis for future work, on the understanding that the text may need further consideration by the working party.

In March 2014 the Council had a discussion on the structure of the Office, on the delimitation of its tasks and competences. Ministers generally agreed that the European Prosecutor's office will be organised on the basis of a college of prosecutors originating from the member states. However, two main issues as regards the structure and the competences of the Office remain still open and will be submitted for discussion, namely:

⁶ Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data ([OJ L 281, 23/11/1995](#))

⁷ Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ([OJ L 350, 30/12/2008, p. 60](#))

- the supervision of the operational work in member states of the EPPO: the question is whether this should mainly be an issue for the respective national members or of the Permanent Chambers (which will be composed of several national members)
- the meaning of the notion of concurrent competence of the EPPO and of national prosecution authorities: the question is whether the EPPO shall have the right to take over all cases of offences against the Union's financial interests, or if this right should be limited in some manner.

The legal basis and the rules for the set-up of the European Public Prosecutor's Office are laid down in Article 86 of the Treaty on the Functioning of the European Union (TFEU). The proposed regulation will be adopted in accordance with a special legislative procedure: the Council will decide unanimously after obtaining the consent of the European Parliament. If unanimity cannot be reached in the Council, the Treaties foresee that a group of at least nine member states may enter into an enhanced cooperation.

The Commission presented its proposal on 17 July 2013 ([12558/13](#)).

Eurojust

- *Orientation debate*

The Council will hold a public debate on a regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust). Ministers will be invited to endorse the outcome of the discussions held at CATS⁸ on the governance of the Agency and to use the text in the annex of the document prepared by the Presidency ([9486/2/14 REV 2](#)) as the starting point for future discussions at the working party.

The Commission's proposal on Eurojust introduces major changes in the structure and governance of the Agency. The main changes concern the distinction between the operational and management functions of the College; the setup of an Executive Board; new provisions on annual and multi-annual programming; the representation of the Commission in the College acting as a Management Board and in the Executive Board; and detailed description of the responsibilities and tasks of the Administrative Director.

This new regulation streamlines Eurojust's functioning and structure in line with the Lisbon Treaty. It also increases the democratic legitimacy of Eurojust: the European Parliament and national Parliaments will in future be more involved in the evaluation of Eurojust's activities.

The Commission presented its proposal in July 2013 ([12566/13](#)).

Procedural safeguards for children in criminal proceedings

- *General approach*

The Council is expected to agree on a general approach on the proposal for a directive on procedural safeguards for children who are suspected or accused in criminal proceedings ([9547/14](#)). This general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the regulation.

⁸ CATS is the Coordinating Committee in the area of police and judicial cooperation in criminal matters.

The proposal aims at ensuring that children are able to understand and follow the criminal proceedings to which they are subject, and that they can exercise their right to a fair trial. The proposal also seeks to prevent re-offending by children and foster their social integration.

The Commission presented its proposal on 27 November 2013 together with a recommendation on procedural safeguards for vulnerable people suspected or accused in criminal proceedings. This recommendation, which is final, addresses adults.

In a package adopted on the same date, the Commission presented also the following texts:

- a proposal for a directive to strengthen the presumption of innocence and the right to be present at trial;
- a proposal for a directive on the right to provisional legal aid for citizens suspected or accused of a crime and for those subject to a European Arrest Warrant;
- a recommendation on procedural safeguards for vulnerable people suspected or accused in criminal proceedings;
- a recommendation on the right to legal aid for suspects or accused persons in criminal proceedings.

Since 2009, the work in the European Union on strengthening procedural rights for suspects and accused persons in criminal proceedings has been carried out on the basis of the [roadmap](#), which was adopted by the Council on 30 November 2009. The roadmap provides a step-by-step approach – one measure at a time – towards establishing a full catalogue of procedural rights for suspects and accused persons in criminal proceedings. The European Council has made the roadmap part of the Stockholm programme.

Three measures have already been adopted on the basis of the roadmap: Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings ([see press release](#)), Directive 2012/13/EU on the right to information in criminal proceedings ([see press release](#)), and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty ([see press release](#)).

Insolvency proceedings

- *General approach*

The Council is expected to agree on a general approach on the proposal for a regulation amending Council Regulation 1346/2000 on insolvency proceedings (document available soon). This general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the regulation.

The proposed regulation aims at making cross-border insolvency proceedings more efficient and effective with a view to ensuring a smooth functioning of the internal market and its resilience in economic crises. This objective is in line with the European Union's current political priorities to promote economic recovery and sustainable growth, a higher investment rate and the preservation of employment, as set out under the Europe 2020 strategy, and to ensure smooth development and the survival of businesses, as stated in the Small Business Act.

The proposed regulation will also bring the current Insolvency Regulation in line with developments in national insolvency laws introduced since its entry into force in 2002.

The proposal was submitted by the Commission in December 2012 ([17883/12](#)).

MIXED COMMITTEE

Task Force Mediterranean

- *Follow up / Information from the Commission*

The committee will be briefed by the Commission about the state of the implementation of the operational actions within the context of the Task Force Mediterranean.

See item above

Schengen Governance - Fifth biannual report on the functioning of the Schengen area

- *Presentation and exchange of views*

The committee will discuss the Commission's fifth biannual report on the functioning of the Schengen area (1 November - 30 April 2013) ([10063/14](#))

The European Council in June 2011 stated that political guidance and cooperation in the Schengen area need to be further strengthened, enhancing mutual trust between member states. On 8 March 2012, the Council adopted conclusions ([7417/12](#)) regarding guidelines for the strengthening of political governance in the Schengen cooperation. In the conclusions the Council agreed to have discussions at ministerial level on that matter once during each presidency, and welcomed the intention of the Commission to present regular reports on the issue in that regard.

Data protection directive

- *State of play*

The committee will be informed by the Presidency on the state of play ([9873/14](#)) of the proposal for a directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data.

See item above.
